

1                   UNITED STATES DISTRICT COURT  
2                   EASTERN DISTRICT OF NEW YORK

3                   ----- X

4                   UNITED STATES OF AMERICA, : 18-CR-204(NGG)  
5    : U.S. Courthouse  
6    : Brooklyn, New York  
7                   -against-                         : TRANSCRIPT OF  
8    : STATUS CONFERENCE  
9    :  
10                   KEITH RANIERE, ET AL,       : March 18, 2019  
11    : 11:00 a.m.  
12    :  
13                   Defendants.                   :  
14                   ----- X

15                   BEFORE:                         HONORABLE NICHOLAS G. GARAUFIS, U.S.D.J.

16                   APPEARANCES:

17                   For the Government:           RICHARD DONOGHUE, ESQ.  
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25                   For the Defendant  
26                   Raniere:                       MARC A. AGNIFILO, ESQ.  
27   TENY R. GERAGOS, ESQ.  
28   PAUL DEROHANNESIAN, II, ESQ.  
29   DANIELLE R. SMITH, ESQ.

30                   Bronfman:                      MARK J. GERAGOS, ESQ.

31                   Mack:                           SEAN S. BUCKLEY, ESQ.  
32   MATTHEW MENCHEL, ESQ.

1 Russell: JUSTINE HARRIS, ESQ.  
2 AMANDA RAVICH, ESQ.

3 L. Salzman: HECTOR DIAZ, ESQ.  
4 ANDREA TAZIOLI, ESQ.

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8 Proceedings recorded by mechanical stenography, transcript  
9 produced by Computer-Assisted Transcript.

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11 \* \* \*

12  
13  
14 THE COURT: You may be seated in the back.

15 All right. Appearances.

16 MS. PENZA: Moira Penza, Tanya Hajjar and Mark Lesko  
17 for the United States.

18 Good morning again, Your Honor.

19 THE COURT: Good morning.

20 One moment.

21 (Defendant Raniere enters the courtroom.)

22 MR. AGNIFIL0: Good morning, Your Honor, Marc  
23 Agnifilo, Teny Geragos, Paul Derohannesian and Danielle Smith  
24 for Keith Raniere who is with us in court.

1 THE COURT: Good morning.

2 MR. DIAZ: Good morning, Hector Diaz and Andrea  
3 Tazioli for Lauren Salzman who is standing here to my left.

4 THE COURT: Good morning.

5 MR. BUCKLEY: Good morning, Your Honor, Sean Buckley  
6 and Matthew Menchel for Ms. Allison Mack who is standing to my  
7 left.

8 THE COURT: Good morning.

9 MS. HARRIS: Good morning, Your Honor, Justine  
10 Harris and Amanda Ravich for Kathy Russell who is at my side.

11 THE COURT: Good morning.

12 MR. GERAGOS: Good morning, Your Honor, Mark  
13 Geragos, G-E-R-A-G-O-S, with Clare Bronfman who is here and  
14 present.

15 THE COURT: All right. Good morning. Please be  
16 seated everyone.

17 Well, I have the second superseding indictment.

18 MS. PENZA: That's correct Your Honor.

19 THE COURT: And there are some issues with that  
20 indictment that have been raised in a letter from  
21 Mr. Agnifilo.

22 Shall we discuss them?

23 MR. AGNIFILO: Sure.

24 THE COURT: Well, I have the letter. Is there  
25 anything more that's not in the letter? The letter seems to

1 be crystal clear.

2 MR. AGNIFILO: Thank you.

3 MS. PENZA: Your Honor, first, just taking the  
4 position of whether this Court can arraign the defendant on  
5 the current superseding indictment, the government is aware of  
6 no law indicating that the defendant could not be arraigned.  
7 We don't believe that Rule 5, which defense counsel cites to,  
8 is the appropriate reference for determining the arraignment  
9 on the superseding indictment. So, in the first instance, we  
10 would ask that all defendants be arraigned on the superseding  
11 indictment as it stands.

12 Second, as we put forward in our original opposition  
13 to the motion to dismiss, the omnibus opposition that we put  
14 forward, we don't believe that there is any law regarding  
15 severance of racketeering acts, especially here where -- in  
16 addition here where we've charged it now as a Glecier  
17 racketeering conspiracy and also the substantive racketeering  
18 conspiracy. So, the government is unsure based on defendant's  
19 letter whether if the Court does not intend, which we do not  
20 believe there's any legal basis to do, to sever the child  
21 pornography related racketeering acts from the RICO -- from  
22 the substantive racketeering and the racketeering conspiracy,  
23 whether in that case the defendant still intends to not waive  
24 venue and would like to face a separate trial in the Northern  
25 District of New York with an additional 15-year mandatory

1 minimum in addition to the trial here where he's facing a  
2 15-year mandatory minimum.

3 So, it is not clear to us what the defendant's  
4 position is on that and so I think that's important for us to  
5 understand as well.

6 MR. AGNIFILO: My position, Your Honor, is that  
7 Mr. Raniere is here, he is ready to be arraigned on all of the  
8 Eastern District of New York charges. I don't tend to get  
9 into the weeds on the Federal Rules of Criminal Procedure  
10 unless there's a reason --

11 THE COURT: Well, it's sort of like incumbent upon  
12 me --

13 MR. AGNIFILO: That's correct.

14 THE COURT: -- to enter into it but if he gets  
15 arraigned on everything and part of the indictment needs to be  
16 severed and sent off somewhere else, that wouldn't result in  
17 any injury to him, would it?

18 MR. AGNIFILO: Well, our request at the end of the  
19 day is really in two parts, one is linked to the Federal Rules  
20 of Criminal Procedure and I don't believe, if I read Rule 10  
21 the way I read Rule 10 that -- and I think I've only said  
22 maybe three or four times in my life that a federal court  
23 hasn't had the power to do something, but I don't know that  
24 this Court has the ability to arraign and take a guilty or not  
25 guilty plea from Mr. Raniere on Northern District of New York

1 charges. Rule 5 lays out very clearly what's supposed to  
2 happen which is -- and at the end of the day what today's  
3 proceeding would be would be an arraignment for the Eastern  
4 District of New York charges and effectively a Rule 5  
5 proceeding for the Northern District of New York charges  
6 because if I read Rule 10, which says that a plea can only be  
7 entered in the venue where the case is pending, I don't know  
8 that we can just take a plea, whether it be a guilty plea or  
9 not guilty plea on a Northern District of New York charge  
10 without going through the Rule 5 process. So, my argument  
11 first is that.

12 The second part which really is the heart and soul I  
13 think of what I want to argue today to Your Honor, we've been  
14 pushing for a trial sort of famously, loudly and maybe even  
15 annoyingly for a very long time and here the government after  
16 having a device for the better part of a year, 26 days before  
17 we have, what, 500, 600 jurors coming here, they're coming  
18 here three weeks from today, they roll out this superseding  
19 indictment with Northern District charges, with brand new  
20 racketeering acts and then they say, well, Judge, you can't  
21 sever them, there's no law that says you can sever them. I  
22 think Your Honor can absolutely sever them. I think Your  
23 Honor has an absolute interest in this Court's trial schedule,  
24 I think Your Honor has taken great pains to try to get this  
25 case to trial promptly. Your Honor has shown that appearance

1 in, appearance out and we are ready, we have been ready to  
2 have this trial on the preexisting charges, not the four day  
3 old charges, on the preexisting charges with a jury coming to  
4 this building on schedule on April 8th.

5 And the government I think is playing chicken and  
6 the government is playing chicken with Your Honor's trial  
7 schedule, in my opinion, saying, no, you know what, Judge, we  
8 can play chicken with it because Your Honor at the end of the  
9 day is not going to sever the racketeering acts and we don't  
10 think you're going to move the trial maybe because Raineri has  
11 been such a loud squeaky wheel about it but it's an impossible  
12 position to put us in and --

13 THE COURT: Wait a minute, the squeaky wheel thing,  
14 you know, I've been doing this for a while, there are lots of  
15 squeaky wheels on both sides, lots of trials, lots of  
16 defendants. I'm not taking it personally that you'd like to  
17 have a trial.

18 MR. AGNIFILO: No, no.

19 THE COURT: You are entitled to a trial.

20 MR. AGNIFILO: I know that.

21 THE COURT: So, forget the banter, just get to the  
22 point.

23 MR. AGNIFILO: Fine. We are ready to try this case  
24 with a jury coming here on April 8th but we don't think we can  
25 be in a position to try the brand new charges that are now

1 five days old.

2 THE COURT: Well, you received the discovery on  
3 these a long time ago.

4 MR. AGNIFIL0: Then we had to give it back. Then we  
5 had to give it back.

6 MS. PENZA: Your Honor, if I --

7 THE COURT: You received this discovery that's the  
8 basis for these additional charges in October I think, so it's  
9 not like this jumped out at you from out of nowhere in March  
10 of 2019. I'm just pointing that out. I mean I'm sure the  
11 government would be pleased to point it out themselves but I  
12 asked that question already regarding the discovery and the  
13 information I have is that the information, the discovery that  
14 is the predicate to the charges was made known to you six  
15 months ago.

16 MR. AGNIFIL0: So, they gave us a cache of discovery  
17 that, I don't know, was 35, 40,000 documents and then,  
18 understandable, they then discovered at some point there's  
19 alleged child pornography in that discovery and they said,  
20 hold the presses, delete it from your systems and return it to  
21 us which, of course, they did and, of course, we did because  
22 it's contraband if they're right. So, we returned it to them.  
23 We -- let me just finish the thought, if I may?

24 So, we went to the FBI on Friday, the four defense  
25 lawyers representing Mr. Raniere went to the FBI on Friday

1 which is the only place we can look at these documents because  
2 it's contraband. I've spoken to a computer forensic expert on  
3 Friday after I saw the images and I said we have a trial date  
4 of April 8th, can you do the forensic analysis that you must  
5 responsibly do in a case where someone is looking at 15-year  
6 mandatory minimums, two of them, by April 8th, and he said, I  
7 don't know that I can. He says, I don't know that I've ever  
8 had to do this kind of computer forensic analysis in less than  
9 three weeks' time.

10 So, in addition to that, Your Honor, there is a  
11 component of the new charges that is going to require us to do  
12 investigation in Mexico, those arrangements have already been  
13 made by us, and so I just don't see how responsibly we can be  
14 ready to try -- the gravity of these new charges is  
15 monumental, I mean we're talking, if they run together, 30  
16 years of mandatory prison time and to give us three weeks,  
17 three weeks to try those new charges, it puts us in a position  
18 that I don't think we can be put in.

19 THE COURT: I hear you.

20 Mr. Geragos.

21 MR. GERAGOS: Good morning. We filed a letter but I  
22 believe there was an ECF problem so I don't know if Your  
23 Honor --

24 THE COURT: You filed the letter, what was the  
25 subject of the letter? I got a lot of letters this weekend.

1 MR. GERAGOS: I know.

2 The letter was about the fact that we wanted to  
3 bring to the Court's attention that we believe that now with  
4 the superseding indictment that there is a situation where the  
5 severance on behalf of Ms. Bronfman is even more necessitated.  
6 As I'm listening to Mr. Agnifilo, it strikes me, and I  
7 suggested this in the letter, that the solution is to sever  
8 off Ms. Bronfman. My -- you know, as the late to the party  
9 guy is they have issues but I don't know that the issues can't  
10 be solved by severing off Ms. Bronfman who shouldn't be in the  
11 middle of that to begin with.

12 They at a certain point need to try this case and  
13 they've got to try both issues, so let them try both issues  
14 but we don't need to be the collateral damage. That's  
15 essentially in essence what the letter says. And I said in  
16 the letter that a cynic might argue that --

17 THE COURT: I read your remark about what a cynic  
18 might argue.

19 MR. GERAGOS: Right.

20 THE COURT: Surprisingly you said that.

21 MR. GERAGOS: I would respectfully argue --

22 THE COURT: Okay.

23 MR. GERAGOS: -- that we should be severed off.

24 THE COURT: I hear you.

25 MR. BUCKLEY: Your Honor --

1           THE COURT: Yes, sir.

2           MR. BUCKLEY: Sean Buckley on behalf of Ms. Allison  
3 Mack. Just to follow up on what Mr. Geragos was saying, based  
4 upon the new charging instrument, we anticipate that we too  
5 will be filing a motion to sever Ms. Mack.

6           THE COURT: Okay. That's fine.

7           So, under Rule 5(c)(3), why wouldn't that apply,  
8 that there be a proceeding undertaken under the Federal Rules  
9 of Criminal Procedure where a district other than the offense  
10 this was brought in -- a district other than that where the  
11 offense originally occurred.

12          I'm just trying to understand this from the  
13 government's point of view for the moment.

14          MS. PENZA: The government's understanding is that  
15 that is only for the initial appearance and that here where  
16 there is a superseding indictment and we are talking about  
17 arraignment on a superseding indictment, that Rule 5 does not  
18 apply at all and, Your Honor, if I can refer you to Rule 43 of  
19 the Federal Rules of Criminal Procedure.

20          THE COURT: Sure.

21          MS. PENZA: That talks about when a defendant's  
22 presence is required and, Your Honor, although Rule 5 --  
23 although a defendant's presence is required at the initial  
24 appearance, the initial arraignment and the plea, the comments  
25 to the 2002 amendments discuss the fact that by inserting the

1 word "initial" before arraignments, revised Rule 43(a)(1)  
2 reflects the view that a defendant need not be --

3 THE COURT: Slowly, slowly.

4 MS. PENZA: Excuse me. Rule 43(a)(1) reflects the  
5 view that a defendant need not be present for subsequent  
6 arraignments based upon a superseding indictment. So, given  
7 that, Your Honor, the government's position is that the Court  
8 may arraign the defendant. The rules that apply to Rule 5 for  
9 an initial appearance do not apply when there is a superseding  
10 indictment and certainly there can be no harm from the Court  
11 arraigning the defendant on the charges before it.

12 THE COURT: Well, let me ask a collateral question;  
13 your charge, I think Count Eleven is the old Count Seven?

14 MS. PENZA: That's correct, Your Honor.

15 THE COURT: All right. And you had -- as  
16 Mr. Agnifilo pointed out in his letter, you had indicated that  
17 that was a charge that could be or should be, I'm not sure  
18 which, sent up to the Northern District of New York if the  
19 government sought to proceed on it, is that a fair statement?

20 MS. PENZA: That is correct, Your Honor, and if I  
21 may add, our U.S. Attorney has been in contact with the U.S.  
22 Attorney in the Northern District of New York and certainly if  
23 the defendant chooses not to waive venue regarding the child  
24 pornography substantive counts, we will seek to have those  
25 brought in the Northern District of New York. However, the

1 government is still unclear as to whether the defendant is  
2 actually intending to not waive venue if the Court does not  
3 sever the racketeering act based on child pornography which  
4 the government respectfully believes that there is no  
5 precedent for the Court doing so. So, we believe that the  
6 defendant should have to make that decision at this point.

7 THE COURT: Well, they may make a motion to sever.  
8 The motions that were made on the first superseding indictment  
9 are no longer -- are now moot because there's a second  
10 superseding indictment and so we're going to have to do a  
11 number of things.

12 Number one, I'm going to arraign the defendants on  
13 the second superseding indictment.

14 To the extent that the defendants want to proceed in  
15 the Northern District of New York, they're going to let me  
16 know by Friday. To the extent that they want to sever, their  
17 formal motions will be due Friday. Everything will be due  
18 Friday because we don't have any more time. I don't need a  
19 long and tortured discussion, just basic case law would be  
20 helpful on this. Lord knows everybody has enough lawyers  
21 around here. So, we will get that accomplished and I'll  
22 proceed from there because you need answers and I don't blame  
23 you on the defense side.

24 So, let's do the arraignment for Mr. Raniere.

25 MR. AGNIFILO: Can I just make a brief record and I

1 apologize --

2 THE COURT: You can make whatever record you want.

3 I'm doing the arraignment now, you can do the record after I  
4 do the arraignment.

5 MR. AGNIFIL0: That's fine.

6 THE COURT: We're going to do it in my order, not  
7 your order.

8 MR. AGNIFIL0: Very good.

9 THE COURT: I think that's the way we're going to do  
10 it --

11

12 MR. AGNIFIL0: Perfect.

13 THE COURT: -- from here on out.

14 Mr. Raniere, will you stand up.

15 Have you received a copy of the second superseding  
16 indictment?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: All right. Do you want it read?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: All right. Do you wish to enter a plea?

21 THE DEFENDANT: Not guilty, Your Honor.

22 THE COURT: All right. A plea of not guilty is  
23 entered to the second superseding indictment. Okay.

24 For -- go ahead.

25 MR. DIAZ: Your Honor, for Ms. Salzman, she has

1 reviewed the superseding indictment, she enters a plea of not  
2 guilty.

3 THE COURT: Lauren Salzman has reviewed the second  
4 superseding indictment. You waive its reading?

5 MR. DIAZ: We do, Your Honor.

6 THE COURT: And do you wish to enter a plea?

7 MR. DIAZ: We do, not guilty.

8 THE COURT: A plea of not guilty is entered to the  
9 second superseding indictment.

10 For Ms. Mack?

11 MR. BUCKLEY: Yes, Your Honor, Sean Buckley on  
12 behalf of Ms. Mack. We have reviewed the second superseding  
13 indictment with Ms. Mack. She waives its public reading and  
14 at this time we enter a plea of not guilty.

15 THE COURT: A plea of not guilty is entered for  
16 Ms. Mack. Thank you very much.

17 Yes, for Ms. Russell.

18 MS. HARRIS: Good morning, Your Honor, on behalf of  
19 Ms. Russell, we've reviewed the second superseding indictment,  
20 she waives a public reading and enters a plea of not guilty.

21 THE COURT: A plea of not guilty is entered for  
22 Ms. Russell, thank you very much.

23 And for Ms. Bronfman?

24 MR. GERAGOS: Thank you, Your Honor, Mark Geragos,  
25 G-E-R-A-G-O-S for Ms. Bronfman. We waive further reading,

1 we've reviewed it and without sacrificing any venue arguments  
2 or any other --

3 THE COURT: Right, you get all your arguments.

4 MR. GERAGOS: Any jurisdictional issues.

5 THE COURT: Everything, you've got everything you  
6 want to put forward.

7 MR. GERAGOS: Yes, thank you, I appreciate it. Not  
8 guilty.

9 THE COURT: Not guilty?

10 MR. GERAGOS: Yes.

11 THE COURT: A plea of not guilty is entered for  
12 Ms. Bronfman to the second superseding indictment.

13 Thank you very much.

14 MR. GERAGOS: Thank you, Your Honor.

15 THE COURT: Oh, and Mr. Geragos, on your request to  
16 have Ms. Necheles removed from representation; is that your  
17 wish, Ms. Bronfman?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: The motion is granted.

20 MR. GERAGOS: Thank you, Your Honor.

21 THE DEFENDANT: Thank you.

22 THE COURT: So, you wanted to make a record.

23 MR. AGNIFIL0: Not to belabor the point, it is our  
24 position that Counts Three, Four, Five and Eleven, the  
25 Northern District of New York counts, that the Court, most

1 respectfully, doesn't have the basis to arraign Mr. Raniere.  
2 That being said, we're prepared to go forward as Your Honor  
3 sees fit.

4 THE COURT: Well, what I'd like you to do is give me  
5 some paper on all of this by Friday.

6 MR. AGNIFIL0: Very good. Thank you.

7 THE COURT: And if you wish to make a motion to  
8 dismiss, you can do that by Friday too. The point being that  
9 you don't have to regurgitate all of the arguments on other  
10 matters. You can make reference to your previous submissions  
11 to the extent that they are relevant to any motion that you  
12 wish to make.

13 MR. AGNIFIL0: Very good.

14 THE COURT: And the government will get until the  
15 following Friday to respond to everything.

16 Now, let me go over some of the other issues, then  
17 you can bring up anything you want but let me just go over my  
18 issues for a moment.

19 The proposed jury questionnaires were due today.  
20 I've given you more time but I don't know how much more time  
21 I've given you.

22 MS. PENZA: Your Honor, we asked that that be stayed  
23 until today. I think given the fact that we have no clarity  
24 on when the trial date will be, given that Mr. Agnifilo is  
25 representing that he cannot be prepared for trial on the child

1 pornography charge -- the child pornography racketeering acts,  
2 that it would be premature to set that deadline today.

3 THE COURT: Well, I have 500 people coming in on  
4 April 8th and 9th so I'm sure that they'd like to have the  
5 opportunity to fill out questionnaires rather than have me  
6 read the questions to them. So, I'd like to know how you all  
7 see that coming down.

8 MS. PENZA: Your Honor, obviously the government's  
9 position is that we do not believe it is conceivable for  
10 severance of the child pornography charges. Of course, both  
11 the government and we expect the defense would want to include  
12 certain questions about that, for example, should that go  
13 forward.

14 Additionally, we now have -- I do want to state for  
15 the record that in terms of the landscape changing for this  
16 case in addition to the superseding indictment, Nancy Salzman  
17 pleaded guilty last week and we are in active plea  
18 negotiations with three additional defendants. So, in terms  
19 of the landscape of this case and what a questionnaire would  
20 look like, we are slightly hampered by where we are in terms  
21 of not having clarity on when we will be going forward and on  
22 what and I think if we understood whether the defendant is --  
23 I think the idea of whether there is going to be child  
24 pornography in the case in the Eastern District of New York is  
25 really going to be the determinant factor on that and the

1 government's position is that there will be and we believe --

2 THE COURT: Well, I've already -- excuse me, I've  
3 already asked Mr. Agnifilo to advise whether his client would  
4 consent to having the substantive child pornography charges  
5 along with Count Eleven transferred to the Northern District  
6 of New York for its consideration.

7 Didn't I just say that?

8 MS. PENZA: Yes, Your Honor, but the question is  
9 really about the RICO predicates. The government concedes  
10 that if the defendant chooses not to waive venue as to the  
11 substantive child pornography charges, that we will try those  
12 at the defendant's peril in the Northern District of New York  
13 where he will be facing a separate 15-year mandatory minimum  
14 and that is fine and we will do that, but the concern is that  
15 the child pornography is also at the heart of our racketeering  
16 conspiracy.

17 THE COURT: And you believe you can go forward with  
18 that here?

19 MS. PENZA: Absolutely, Your Honor, and we believe  
20 there is no precedent, certainly defendant has cited none in  
21 his initial motion that would allow a severance of that.

22 THE COURT: Do you have a back problem?

23 MR. GERAGOS: No. I'm sorry, I apologize.

24 MS. PENZA: That would be the same -- to suggest  
25 that we would not be able to defeat the idea of RICO. I

1 mean as it stands we have racketeering acts that were alleged  
2 in multiple districts and there's never been the argument that  
3 we can't proceed on racketeering acts venued in a different  
4 district. That flies in the face of all precedent and the  
5 whole point of RICO.

6 THE COURT: All right. I hear your point. Okay.  
7 We will hear from Mr. Agnifilo on Friday and we'll be  
8 enlightened.

9 MR. AGNIFIL0: So --

10 THE COURT: Yes.

11 MR. AGNIFIL0: I just want to clarify, I did not say  
12 I could not be ready on April 8th, I said I spoke to a  
13 computer expert who said it's very difficult to be ready on  
14 April 8th. I'm going to move heaven and earth to be ready on  
15 April 8th.

16 THE COURT: Me too.

17 MR. AGNIFIL0: Your Honor, you and I are on the same  
18 page on this.

19 THE COURT: Exactly. We're going to trial on April  
20 29th, that's what we're doing.

21 MR. AGNIFIL0: Okay.

22 THE COURT: And the best way to figure out who's  
23 going to trial on April 29th is to tell you that we're going  
24 to start picking a jury on April 8th.

25 MR. AGNIFIL0: Terrific.

1           THE COURT: It's guaranteed.

2           MR. AGNIFIL0: Good.

3           THE COURT: It's in the first day of baby judge  
4 school, that's what they teach, set a date, everyone knows  
5 what the date is and then live up to your promises.

6           MR. AGNIFIL0: I couldn't agree more.

7           THE COURT: Go ahead.

8           MR. AGNIFIL0: One more question, Judge.

9           We want the jury questionnaires. We gave it to them  
10 on March 6th. We want the jury questionnaires. Let's do this  
11 if we're going to do this. They gave expert -- they blew the  
12 deadline on expert disclosures. They're not giving back the  
13 jury questionnaires. If we're going to do this trial, let's  
14 do this trial.

15           THE COURT: Well -- no, no.

16           MR. GERAGOS: I'm going to have --

17           THE COURT: Mr. Geragos gets his turn.

18           MR. GERAGOS: I'm going to have a back problem.

19           I think she said the one thing that I think, if I  
20 can be so bold as the latecomer to make a prediction here,  
21 this is going to end up -- we're going to end up with  
22 Ms. Bronfman and Mr. Raniere being the last two people  
23 standing.

24           So, the problem is if we've got till Friday, the  
25 22nd and if they've got till the following Friday, the 29th,

1 in order to deal with the severance issues, then that leaves  
2 us with we're one week away by the time the government  
3 responds, I assume that the other three are going to enter  
4 into some kind of agreement by then, and then I don't know how  
5 to do the jury questionnaire from her standpoint given what I  
6 consider to be the prejudice, that's my problem.

7 THE COURT: Look, why don't you just get the  
8 questions to them this week and then we'll make changes as  
9 necessary once we know what's left in this case and the only  
10 thing that has to be done definitively is that there has to be  
11 a questionnaire that's approved by the Court by the 5th of  
12 April, that's what I need to do and then somebody is going to  
13 need to print it out, maybe the 4th of April. So, we've got  
14 like a couple of weeks in there.

15 But I need you to get whatever you have now to the  
16 other side so that they can look at it so you can have a  
17 conversation and then if there are additional questions or  
18 deletions, if there are deletion based on what we resolve in  
19 the next two weeks, then we can make those adjustments, but I  
20 would like the defense to have your proposed questionnaire so  
21 they can look at it. They're going to be busy for the next  
22 few days working on severance motions, motions to dismiss,  
23 other issues, issues about venue, arraignments, all of that  
24 which I understand but let's -- when can you have your  
25 questions is my question?

1 MS. PENZA: We can submit something by the end of  
2 this week.

3 THE COURT: Good, Friday. That's good. Then you'll  
4 talk among each other.

5 The other thing I would say is I don't have a  
6 crystal ball, I don't know how these negotiations of which  
7 you've spoken are going to pan out if they do, so I'm  
8 operating on the assumption that every defendant seated at  
9 that defense table is going to go to trial. I'm operating on  
10 that assumption.

11 And I'm going to give everyone place cards as to  
12 where they're going to sit too because it's going to be  
13 organized, all right. I even added a table at the end so  
14 there would be plenty of room so everyone can watch the jury  
15 and the jury can watch everyone. So, we've made adjustments  
16 so that we can move forward and I just want you to understand  
17 that I'm not assuming any changes. If changes occur, we'll  
18 make adjustments.

19 Yes.

20 MS. PENZA: Yes, Your Honor, I'm sorry to stand  
21 again but we do have -- the government has an additional  
22 concern given the current trial date if the defendants have  
23 additional motions to raise. So, at our last status  
24 conference before Judge Scanlon there was the -- I believe  
25 there were statements about making additional motions

1 regarding evidence that was produced pursuant to a court order  
2 but was produced later pursuant to that court order and there  
3 may be other motions.

4 So, for example, defendant Raineri has stated  
5 previously that he intends to make motions for either closed  
6 caption TV or depositions in Mexico. He punted on that and so  
7 now we're in a place where he has never made those motions and  
8 the government certainly doesn't want to be on the eve of  
9 trial facing depositions in Mexico.

10 So, could we ask Your Honor to require that by  
11 Friday that the defendants raise any other motions that they  
12 intend to make based on the current indictment, Your Honor?

13 MR. AGNIFILO: All will be there Friday.

14 THE COURT: Everything.

15 MR. AGNIFILO: Everything April 8th, 500 jurors,  
16 let's go, let's go I mean.

17 THE COURT: I know you speak for your client.

18 MR. AGNIFILO: I do.

19 THE COURT: But that rule applies to everybody.  
20 Friday.

21 MS. PENZA: Thank you, Your Honor.

22 THE COURT: Is there going to be an appeal from the  
23 magistrate judge's 57 page omnibus discovery R & R? I'm just  
24 curious. You don't have to guarantee you'll do it but I just  
25 want to know is it likely you'll do it?

1 (No response.)

2 THE COURT: I'd like to have any of that by Friday  
3 too.

4 MS. PENZA: And may I raise one additional thing?

5 THE COURT: I guess so.

6 MS. PENZA: Your Honor, as to additional outstanding  
7 motions, obviously we understand that you and Judge Scanlon  
8 have been very busy but there are additional motions to  
9 suppress that are outstanding. For example, the documents  
10 related to the storage locker, none of those have gone to any  
11 defendant right now.

12 Additionally, in terms of privileged documents, we  
13 have submitted a motion to Judge Scanlon. Again, we know  
14 she's working very hard but we have over 100,000 -- I don't  
15 have the exact number in front of me because I'm not on the  
16 privilege team -- of documents and it is impossible for the  
17 privilege team to go one by one through those documents.

18 Ms. Bronfman's counsel have now stated that because  
19 they are prepping for trial they do not -- they are not in a  
20 position to go through the documents that our team has  
21 presented as presumptively not privileged. So, the government  
22 does have before Judge Scanlon another motion which we hope  
23 would cut to the root of a lot of the privilege issues. We  
24 believe that a lot of the privilege issues that defendants  
25 have raised are farfetched. We brought that up several months

1 ago. So, these are documents that we want in terms of  
2 preparing for trial and to be able to provide to other  
3 defendants.

4 So, in terms of preparing whenever we get that  
5 ruling, if we get a ruling that is in our favor, we intend to  
6 use those documents for trial and so we just wanted to put  
7 that before Your Honor as well.

8 MR. AGNIFILO: Your Honor, what I'm starting to hear  
9 is they're not ready to try this case which to me is amazing,  
10 which is also to me why they're returning the superseding  
11 indictment 26 days before Your Honor has 500 jurors.

12 We need the discovery, we need it immediately.  
13 There's no basis to wait, there's no basis to do anything. I  
14 mean they've blown through agreed upon deadlines in regard to  
15 expert disclosures. That's going to be in the Friday brief.  
16 They're going to be precluded on the experts because they  
17 didn't disclose them on time.

18 They're late on their discovery and what they did,  
19 and it's clear, is that they thought just by returning this  
20 superseding indictment they could defeat the April 8th trial  
21 date and that's just not -- that's a gamble that they're  
22 taking and it's not a gamble that we are anteing up in. I  
23 mean my client has been in jail for the better part of a  
24 year and we want this trial but we want it fairly and they  
25 have the obligation to give over the discovery as soon as

1 possible.

2 MR. GERAGOS: I don't understand how I can do all  
3 the motions on behalf of Ms. Bronfman if I don't have the  
4 discovery. So, I don't have everything so I don't know -- I  
5 mean if they're going to come with late-breaking experts and I  
6 want to do some kind of a hearing on the experts if I want to  
7 respond to that.

8 THE COURT: You can ask that the trial be put  
9 over.

10 MS. PENZA: Your Honor, just to be clear, I  
11 think Ms. Bronfman is the only one with all the documents  
12 basically.

13 MR. GERAGOS: That's not what I'm talking about.  
14 I assume they're still going to disclose other documents and  
15 other items. If I'm wrong, that's fine.

16 THE COURT: I mean that's the import of what the  
17 government has said, that there are some documents that are  
18 being reviewed by the taint team or whoever it is that have  
19 not yet been placed in the hands of the defendants which may  
20 end up in the hands of the defendants once whatever issues the  
21 taint team is engaged in are resolved; is that a fair  
22 statement?

23 MS. PENZA: Yes, and particularly once the motion in  
24 front of Judge Scanlon is resolved, we believe there will be  
25 buckets of documents.

1 THE COURT: Buckets?

2 MS. PENZA: Tens of thousands, hundreds of  
3 thousands -- tens of thousands.

4 THE COURT: I know they read fast but that's a  
5 concern for the Court.

6 MS. PENZA: And, Your Honor, if I may also just  
7 state for the record, the idea that the government held back  
8 and allowed the defendants to keep child pornography in its  
9 possession for months just so that we could return a  
10 superseding indictment when we did is ludicrous.

11 MR. AGNIFIL0: Your Honor, Ms. Geragos is well  
12 versed in the discovery issues so I'm going to ask her to  
13 address you on this part.

14 MS. GERAGOS: Your Honor, Teny Geragos for Keith  
15 Raniere. What I heard the government just say is that --  
16 which we are, we've told Judge Scanlon that we're going to  
17 make a motion to suppress the late-breaking discovery that  
18 they filed that they've had in their possession at least since  
19 December 4th, 2018. They filed a motion with Judge Scanlon to  
20 disclose that discovery to us six weeks before jury selection.  
21 That date was, according to our calculation, February 25th;  
22 according to the government's calculation, I think March 4th.

23 They told us at the appearance that we still didn't  
24 have all of that discovery, we still don't have all of that  
25 discovery and now they have represented to the Court that they

1 have turned it all over. We haven't received all of it and  
2 that is stuff that is heartland discovery from a year ago  
3 that's been relevant to this indictment, the complaint, all of  
4 the indictments and we don't have it yet.

5 So. I think that's mainly what we're trying --  
6 what Mr. Agnifilo is saying, we just don't have it, so that's  
7 what the motion to suppress will be that we'll be filing on  
8 Friday.

9 THE COURT: I see.

10 MS. PENZA: So, Your Honor, in terms of standing,  
11 the government -- if there is a question as to how there could  
12 be a motion to suppress given that this is a device as to  
13 which every defendant disclaimed a privacy interest from the  
14 beginning of this case but putting that to the side, there was  
15 a --

16 THE COURT: That's including Ms. Bronfman?

17 MS. PENZA: Yes, this is a device that was recovered  
18 from 8 Hale which has been referred to in various papers as  
19 the library.

20 THE COURT: Is this a storage unit?

21 MS. PENZA: No, Your Honor.

22 THE COURT: This is something else?

23 MS. PENZA: This is separate, this is separate, but  
24 regarding -- actually now maybe I'm not speaking about the  
25 same thing but -- sorry -- what Ms. Geragos is speaking

1 about -- and I apologize for misspeaking just then. What  
2 Ms. Geragos is speaking about is, again, I do not believe that  
3 there will be standing to suppress but in addition to that,  
4 the government did actually, and we planned on contacting  
5 defense counsel today although defense counsel represented  
6 that certain disks were corrupted, we have reviewed those  
7 disks and we believe that it just requires them to go into  
8 different folders to actually see the materials that we are  
9 talking about.

10 THE COURT: Okay.

11 MS. PENZA: And then, sorry, one additional thing,  
12 there are privacy concerns that were raised by individual  
13 defendants, at least one individual defendant about some of  
14 the material that we did receive delayed disclosure over, we'd  
15 like the opportunity to talk to the attorney for that  
16 defendant and see if we can reach a resolution about making  
17 the remainder of the materials available but those are  
18 primarily images which should not take a significant amount of  
19 time to review.

20 THE COURT: So, I take it the defense would like to  
21 prioritize resolving the motion to suppress the documents from  
22 Ms. Bronfman's storage unit, is that a fair statement?

23 So, I need that as a separate motion, I need that as  
24 a separate submission.

25 MR. GERAGOS: Correct.

1           THE COURT: For Friday.

2           MS. PENZA: I believe that's fully briefed, Your  
3 Honor.

4           THE COURT: Actually it is briefed so --

5           MS. GERAGOS: Yes, I believe that is briefed. What  
6 we will be filing on Friday is to suppress -- Judge Scanlon  
7 set a deadline for the government to produce certain materials  
8 that was allowed under Rule 16 to defer disclosure to a  
9 certain date and our position is they've blown that deadline  
10 completely and they should be suppressed and they shouldn't be  
11 allowed to use it at trial.

12          MR. GERAGOS: In other words, it will be a very  
13 succinct submission.

14          THE COURT: Okay. And then the government will have  
15 a chance to respond to that submission a week from Friday.

16          MS. PENZA: Thank you, Your Honor.

17          THE COURT: And then I'll decide that, I'll make  
18 that a priority.

19          MR. BUCKLEY: Your Honor, if I may raise one point  
20 of clarification? We will be prepared to make any motions  
21 based upon the new superseder by this Friday but I just want  
22 to make sure that the Friday date does not apply to motions in  
23 limine because the motions in limine necessarily are going to  
24 be informed by Your Honor's rulings.

25          THE COURT: Right, that's right.

1 MR. BUCKLEY: Okay.

2 Thank you, Judge.

3 THE COURT: On the motions in limine, well, I'll set  
4 a date for that once I see what we have this Friday and next  
5 Friday, so that it's going to be a very close turnaround.

6 MR. BUCKLEY: Right.

7 THE COURT: We'll have to deal with it. I'm sure  
8 you've dealt with that problem before.

9 MR. BUCKLEY: Yes.

10 Thank you, Your Honor.

11 THE COURT: Okay. Anything else from the  
12 government?

13 MS. PENZA: No, Your Honor.

14 THE COURT: All right. Other issues from the  
15 defense?

16 You are not doing this alone, are you,  
17 Mr. Geragos?

18 I'm now concerned. Before Ms. Bronfman had like two  
19 or three attorneys and now, I know you're talented but it's  
20 just you. So, I want to protect her rights.

21 MR. GERAGOS: Yes, I'm not doing it alone,  
22 Ms. Cassidy will be joining me.

23 THE COURT: You and Ms. Cassidy?

24 MR. GERAGOS: Yes.

25 THE COURT: All right.

1                   MR. GERAGOS: And I'm also hopeful that I won't be  
2 here on April 8th but we'll wait and see until you get the  
3 motion to sever.

4                   THE COURT: Once again, my crystal ball is missing.  
5 So, anything else from any defense counsel for today?

6                   (No response.)

7                   THE COURT: All right.

8                   MS. GERAGOS: I'm sorry, Your Honor. We put in a  
9 letter --

10                  THE COURT: Ms. Geragos.

11                  MS. GERAGOS: The government before our last court  
12 appearance filed a letter, docket number 386, requesting dates  
13 for witness lists, exhibit lists. I just think since we are  
14 operating under the assumption that we are going to trial on  
15 April 8th, if we could try to set the dates for the exhibit  
16 list because that's something we need to start preparing.

17                  MS. PENZA: Your Honor, we proposed the 15th. We  
18 don't believe that the 1st or whatever Ms. Geragos requested  
19 is feasible especially given that we don't know what this  
20 trial is going to look like.

21                  MS. GERAGOS: What I requested, Your Honor, was  
22 that we set April 1st as a deadline for all the parties to  
23 meet and confer regarding exhibits and witness lists because  
24 I think that's something that would be efficient and then the  
25 April 7th date, which would only be a week before what the

1 government requested, would be the deadline to exchange trial  
2 exhibits and witness lists and we agree as to the government's  
3 proposed date of April 15th for proposed final jury charges,  
4 final transcripts and translations. That's document number  
5 422. And I think that's consistent with cases in this  
6 district that Mr. Agnifilo and I have both had.

7 MS. PENZA: Your Honor, respectfully, the government  
8 believes that we should defer any meeting and conferring on  
9 exhibits until we have more clarity as to who the parties are  
10 going to be and what counts are being charged. That is going  
11 to change what our witness list and exhibits are.

12 THE COURT: Let's meet on Thursday, April 4th at 11  
13 a.m. and discuss it. I would suggest that you try to meet and  
14 confer before that time.

15 MR. AGNIFILo: Thank you.

16 THE COURT: That way we just move things along as  
17 best as possible. That gives you an opportunity to finish the  
18 briefing of the matters that I've asked you to brief and then  
19 to move on from there and perhaps we'll have some more clarity  
20 on the case going forward at that point.

21 MS. PENZA: Thank you, Your Honor.

22 THE COURT: All right.

23 Anything else from you, sir?

24 MR. AGNIFILo: No, I'm good. Nothing, Judge.

25 THE COURT: Mr. Diaz?

1 MR. DIAZ: No, Your Honor.

2 THE COURT: Mr. Buckley?

3 MR. BUCKLEY: No. Thank you, Your Honor.

4 THE COURT: Ms. Harris?

5 MS. HARRIS: No, Your Honor.

6 THE COURT: Mr. Geragos?

7 MR. GERAGOS: No, Your Honor. Thank you.

8 THE COURT: All right. Thank you very much,  
9 everybody. Have a nice day.

10 (Time noted: 11:50 a.m.)

11 (End of proceedings.)

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